

Senate Bill No. 451

CHAPTER 853

An act to add Section 107.4 to the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 29, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 451, Ducheny. Taxation of possessory interests.

Existing property tax law requires that all property subject to tax be assessed at its full value, and includes certain possessory interests among those property interests subject to tax. Existing property tax law defines a taxable possessory interest to be a use that is independent, durable, and exclusive.

This bill would clarify that, for purposes of the definition of a taxable possessory interest, a possession or use is not independent if it is pursuant to a contract, that includes, but is not limited to, a long-term lease, for the private construction, renovation, rehabilitation, replacement, management, or maintenance of housing for active duty military personnel and their dependents, if the housing units meet specified criteria. This bill would state that its provisions are declaratory of existing law.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares as follows:

(a) The provision of military family housing is a mission of the military, as stated by the United States Department of Defense.

(b) Under the Military Housing Privatization Initiative (MHPI) (10 U.S.C. Sec. 2871 and following), Congress has entrusted private contractors to construct, renovate, replace, or manage military family housing pursuant to extensive guidelines and restrictions imposed by the military.

(c) The military family housing constructed and managed by private contractors pursuant to the MHPI is situated on a military facility under the control of the military.

(d) A private contractor who constructs, renovates, replaces, or manages military family housing pursuant to the MHPI has neither the right nor the ability to exercise independent authority and control over

the day-to-day management or operation of the military family housing, as demonstrated by all of the following:

(1) The number of units, the number of bedrooms per unit, and the unit mix are set by the military, and may not be changed by the contractor without prior approval by the military.

(2) Tenants are designated by a military housing agency.

(3) Rents charged to military personnel or their dependents for the housing units are set by the military.

(4) Financing for the project is subject to the approval of the military. The military has sole discretion over the approval of this financing.

(5) Evictions from the housing units are subject to military justice procedures.

(6) Services for the project normally supplied by a municipality are required to be purchased from the military facility or from a provider designated by the military facility.

(7) The military prescribes rules and regulations governing the use and occupancy of the property.

(8) The military has the authority to remove or bar persons from the property.

(9) The military has the authority to impose access restrictions on the contractor and its tenants.

SEC. 2. Section 107.4 is added to the Revenue and Taxation Code, to read:

107.4. For purposes of paragraph (1) of subdivision (a) of Section 107, there is no independent possession or use of land or improvements if that possession or use is pursuant to a contract that includes, but is not limited to, a long-term lease, for the private construction, renovation, rehabilitation, replacement, management, or maintenance of housing for active duty military personnel and their dependents, if all of the following criteria are met:

(a) The military family housing constructed and managed by private contractor is situated on a military facility under military control, and the construction of that housing is performed under military guidelines in the same manner as construction that is performed by the military.

(b) All services normally provided by a municipality are required to be purchased from the military facility or a provider designated by the military.

(c) The private contractor is not given the right and ability to exercise any significant authority and control over the management or operation of the military family housing, separate and apart from the rules and regulations of the military.



(d) The number of units, the number of bedrooms per unit, and the unit mix are set by the military, and may not be changed by the contractor without prior approval by the military.

(e) Tenants are designated by a military housing agency.

(f) Financing for the project is subject to the approval of the military in its sole discretion.

(g) Rents charged to military personnel or their dependents are set by the military.

(h) The military controls the distribution of revenues from the project to the private contractor, and the private contractor is allowed only a predetermined profit or fee for constructing the military family housing.

(i) Evictions from the housing units are subject to the military justice system.

(j) The military prescribes rules and regulations governing the use and occupancy of the property.

(k) The military has the authority to remove or bar persons from the property.

(l) The military may impose access restrictions on the contractor and its tenants.

(m) Any reduction or, if that amount is unknown, the private contractor's reasonable estimate of savings, in property taxes on leased property used for military housing under the Military Housing Privatization Initiative (10 U.S.C. Sec. 2871 and following) shall inure solely to the benefit of the residents of the military housing through improvements, such as a child care center provided by the private contractor.

(n) The military family housing is constructed, renovated, rehabilitated, remodeled, replaced, or managed under the Military Housing Privatization Initiative, or any successor to that law.

SEC. 3. (a) It is the intent of the Legislature in enacting this act to provide legislative direction to county assessors, the State Board of Equalization, the courts, and other involved parties regarding the intended interpretation of the term "independent" as it relates to military family housing units that are constructed, renovated, rehabilitated, remodeled, replaced, or managed under the Military Housing Privatization Initiative, or any successor to that law.

(b) Section 107.4 of the Revenue and Taxation Code, as added by this act, does not constitute a change in, but rather, is declaratory of, existing law. Therefore, because this act is declaratory of existing law, no provision of state law, including, but not limited to, Section 8 of Article XVI of the California Constitution, requires reimbursement to any entity



for any ad valorem property tax revenue losses that may result from this act.

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